IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 28781 of 2005(B)

OS.311/2003 of I ADDL.SUB COURT,ERNAKULAM
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PETITIONER:

MULLOOR CHITTIES, A REGISTRERED PARTNERSHIP FIRM, MARKET ROAD, ERNAKULAM.

BY ADV. SRI.JIMMY JOHN VELLANIKARAN

RESPONDENTS:
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1. **K.R.ASITHA, AGED ABOUT 46 YEARS, W/O/LATE K.VENUGOPAL, LAKSHMI NILAYAM, HOUSE NO.42/2007, PONE ROAD, EDAPPALLY, ERNAKULAM, COCHIN 24.**

2. **SREJITH, AGED ABOUT 25 YEARS, S/O.K.K.VENUGOPAL, LAKSHMI NILAYAM, HOUSE NO. 42/2007, PONE ROAD, COCHIN24.**

3. **LAKSHMI (MINOR), AGED 17 YEARS, D/O.LATE K.K.VENUGOPAL, REPRESENTED BYMOTHER AND GUARDIAN, IST RESPONDENT ABOVE.**

4. **MARIYAM, AGED ABOUT 57 YEARS, W/O.JOY, CHERUPUNATHIL HOUSE, VIKAS NAGAR, MARADU VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT.**

R1 TO R3 BY ADV. SRI.M.P.RAMNATH
R4 BY SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF CHITTY AGREEMENT DTD. 4-6-99 EXECUTED BY VENUGOPAL AND K.R. ASITHA.

EXT.P2 TRUE COPY OF THE AGREEMENT DTD.5-10-99 EXECUTED BY LATE K.K.VENUGOPAL, K.R. ASITHA AND MARIAM.

EXT.P3 TRUE COPY OF THE AGREEMENT EXECUTED BY LATE K.K.VENUGOPAL, K.R.ASITHA AND MARIAM DTD.25.10.99.

EXT.P4 TRUE COPY OF THE PLAINT DATED 21.5.03 FILED BY THE PETITIONER BEFORE THE SUB COURT, ERNAKULAM AS OS 311/03.

EXT.P5 TRUE COPY OF THE WRITTEN STATEMENT DTD.10.11.03 FILED BY RESPONDENTS 1 TO 3.

EXT.P6 TRUE COPY OF THE WRITTEN STATEMENT DTD. 27.11.03 FILED BY THE 4TH RESPONDENT.

EXT.P7 TRUE COPY OF THE PETITION DTD.10.10.05 TO GIVE PETITIONER AN OPPORTUNITY TO PAY DEFICIT STAMP DUTY AND PENALTY IN CASE HON'BLE COURT FIND THAT STAMP DUTY PAID IS INSUFFICIENT.

EXT.P8 TRUE COPY OF THE PETITION DATED 10.10.05 TO RECEIVE THE MINUTES CHIITY LEDGERS, AUTHORISATION LETTER.

EXT.P9 TRUE COPY OF THE PETITION DTD. 10.10.05 TO RE-OPEN EVIDENCE.

EXT.P10 TRUE COPY OF THE PETITION DT. 10.10.05 TO COMPARE ADMITTED SIGNATURES OF LATE K.K. VENUGOPAL WITH THE DISPUTES SIGNATURES IN EXTS.A4, A5, A8, A9 A11 AND A12 MARKED IN THE SUIT.

EXT.P11 TRUE COPY OF THE PETITION DTD. 10.10.05 TO RECALL PW1.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 28781 OF 2005

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Dated this the 5th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking a direction to the 1st Additional Sub Court, Ernakulam to reopen the evidence in O.S.311/03 and to pass orders regarding stamp duty on Ext.A5, A9 and A12 and to afford an opportunity to pay stamp duty and penalty as per law and for comparison of signature of late K.K. Venugopal with admitted signature available in the Court and for other reliefs.

2. Heard the counsel for both sides. The counsel for the respondent very strongly opposes the writ petition. Ext.P7 is an application to pass an order on the question of stamp duty and to afford an opportunity to the petitioner to cure the defects if any. Ext.P8 is for reception of documents. Ext.P9 is for reopening the evidence and Ext.P11 is to recall PW1 and further examine him. Ext.P10 is to compare the signature of late Sri. K.K. Venugopal with the admitted signature available before the Court. It is a settled principle that the admissibility or otherwise of a document produced or tendered in evidence has to be considered by the

Court at the earliest stage and if the Court finds that the document is to be stamped, it has to give an opportunity to the person who had produced it to pay the stamp duty and penalty or otherwise impound the document to the competent authority for imposition of stamp duty. So it is not correct to postpone that process till the time of pronouncement of judgment. Therefore, the Court below is directed to consider Ext.P7 and pass appropriate orders after hearing both sides.

3. Exts.P8, P9 and P11 deal with the question of reception of documents, reopening of evidence and recall of PW1. It is submitted by the learned counsel for the writ petitioner that the documents produced are absolutely essential for properly resolving the controversy between the parties and therefore he must be given an opportunity to produce that document and further opportunity to recall PW1 and examine him and for that purpose to reopen the evidence. In the interest of justice it is desirable that the said opportunity is given so that the plaintiff will not have any grievance at a later stage that his evidence has been suppressed. Therefore, the trial court is directed to consider Exts.P8, P9 and P11 and pass appropriate orders.

4. Next prayer is to compare the signature of late K.K. Venugopal with the disputed signature and the admitted signature. I am fully conscious of the fact that the Court is not an expert to compare the signatures. But Section 73 does not totally prohibit comparison of signature by the Court. The decision on the point are to the effect that if the Court is in a position to compare the signature and there are other materials and evidences available the Court can make use of that piece of evidence also for the purpose of coming into a conclusion. Whether the Court is in a position to compare the signature in a particular matter is left to the discretion of the Court after making an attempt to compare the disputed signature with the admitted signature. So there is no harm in allowing that prayer as well. I make it very clear that the defendants also must be given equal opportunity to produce evidence in support of their contentions to rebut evidence that is tendered by the plaintiff. Therefore, the writ petition is disposed of as follows:

5. The trial court is directed to pass appropriate orders in Exts.P7 to P11 in the light of the discussions made in the previous paragraphs and thereafter proceed to dispose of the matter affording equal opportunities to both sides to adduce any further

evidence, if they feel necessary, for a proper disposal. The parties are directed to appear before the Court below on 5.07.2007.

M.N. KRISHNAN, JUDGE.

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